

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF DEL NORTE

**FILED**

JUL 24 2000

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 ) SUPERIOR COURT OF CALIFORNIA  
 ) COUNTY OF DEL NORTE  
 Plaintiff, )  
 vs. ) No. 97-268-X  
 )  
 ELLIOTT SCOTT GRIZZLE, (H-10106), )  
 )  
 Defendant. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ON HEARING ON MOTIONS

Had in the Superior Court of the State of California  
in and for the County of Del Norte, beginning at 2:15  
O'Clock, P.M., Thursday, February 4, 1999. Before the:

Honorable ROBERT W. WEIR, Judge thereof

APPEARANCES

For the People: MICHAEL D. RIESE  
Interim District Attorney  
County of Del Norte  
County Courthouse  
Crescent City, California 95531  
By: JAMES FALLMAN, Dep. D.A.

For the Defendant:

RUSSELL J. CLANTON  
Attorney at Law  
725 H Street, Suite D  
Arcata, California 95521

Reported by: Lorraine Kaye O'Hara, CSR No. 5637, RPR

COPY

1 MR. CLANTON: And he is anticipated being -- being  
2 called as a witness here and I think just as any  
3 correctional officer would want to review his reports, those  
4 sort of things, he's simply asking that all of his documents  
5 be returned.

6 THE COURT: Well, I think he and C.D.C. are going to  
7 have to work that one out. Between them. Before the Court  
8 did, at least.

9 All right, anything else? All right, we'll have  
10 to -- we'll have to simply delay Mr. Grizzle's matter then  
11 until the representative arrives concerning the discovery of  
12 the -- those items as to -- the other inmate.

13 (The proceedings then  
14 recessed until 3:37 p.m.  
15 while unrelated cases were  
heard.)

16 THE COURT: Returning to the People versus Elliott  
17 Grizzle. Case 97-268-X.

18 (Brief pause waiting for defendant to be brought in.)

19 MR. CLANTON: Your Honor, does the Court have that  
20 copy of the fax I sent? I believe you had the copy I  
21 originally sent. You took that in chambers? I believe I'll  
22 need to address --

23 THE COURT: Okay, I have the January 29th, 1999 copy,  
24 and you're -- you want back the February 4th copy because it  
25 has the same information?

26 MR. CLANTON: If I may approach.

27 THE COURT: All right, I'll return that to you.

28 MR. CLANTON: Thank you.

1 THE COURT: All right, we -- in the matter of the  
2 People versus Elliott Grizzle, Mr. Grizzle is present, Mr.  
3 Clanton and the District Attorney. And we had recessed this  
4 matter earlier this afternoon because of the issue of the  
5 confidential information.

6 For the record, I did go through a confidential  
7 Department of Corrections file that was provided to the  
8 Court last week by agreement of the parties. Pertaining to  
9 Inmate Clark. Apparently a witness in this case. And I  
10 have identified a number of matters which I find to be  
11 discoverable and -- and -- and that should be turned over to  
12 the defendant by way of discovery.

13 However, because it is confidential and privileged  
14 information, I did notify Mr. Petzke of the Attorney  
15 General's Office that before actually turning these matters  
16 over I would give the State the option of whether they wish  
17 to take some sanction because of the confidential nature of  
18 the matter rather than turn it over. He had indicated that  
19 there would be a representative of the Department of  
20 Correction of the State, I'm not sure who he had in mind,  
21 would be here today.

22 MR. FALLMAN: Lieutenant Kersh is here, your Honor.

23 THE COURT: Who?

24 MR. FALLMAN: Lieutenant Kersh.

25 THE COURT: Lieutenant Kersh? That's you, sir?

26 LIEUTENANT KERSH: Yes, your Honor.

27 THE COURT: All right, I have identified a total  
28 of -- four? Four items that appear to me to be properly

1 discoverable and -- I -- I had advised Mr. Petzke over the  
2 telephone which ones they were.

3 Are you -- are you prepared to speak to whether those  
4 are matters that the Department does want to turn over  
5 rather than receive the sanction?

6 LIEUTENANT KERSH: I would have to see the material,  
7 your Honor. I'm not familiar with it.

8 THE COURT: All right. Well, I have the file here.  
9 If you need some time to examine it I guess you could. Or  
10 if you need -- if you could just glance at it or I can --  
11 well, how would you like to handle it?

12 LIEUTENANT KERSH: I'd like to take a look at it  
13 briefly.

14 THE COURT: All right. Well, I have here the items.  
15 If you'd like to approach the bench I can show you which  
16 ones I'm talking about.

17 This can be off the record.

18 (Lieutenant Kersh at bench for off-the-record discussion.)

19 THE COURT: Okay, so we're on -- back on the record.  
20 Lieutenant Kersh has had an opportunity now to examine the  
21 items that I have -- that I selected out as being relevant  
22 or pertaining to this case to warrant discovery of them.

23 And Lieutenant Kersh, did you -- does the Department  
24 have any objection then to those matters being revealed and  
25 provided to the defense?

26 LIEUTENANT KERSH: No, your Honor.

27 THE COURT: All right. So those documents, so that  
28 we have a record of it now, one is a memorandum dated

1 January 13th, 1999 with a subject "Inmate Perjury" addressed  
2 to the Deputy District Attorney and -- and authored by James  
3 Rogers of the Office of Internal Affairs to the Northern  
4 Region. That will be the first one.

5 The next item is a memorandum dated January 22nd,  
6 1999 addressed to Senior Special Agent David Mansfield and  
7 authored by Office of Internal Affairs Special Agent James  
8 Rogers with a caption "Inmate Frederick Clark intimidation."

9 The next item is a cover letter addressed to Special  
10 Agent Rogers and signed by James Fallman, Senior Deputy  
11 District Attorney. The cover letter by itself is not  
12 particularly significant, although I'll order that it be  
13 included, but -- but accompanying it is a handwritten  
14 document consisting of two pages apparently and dated  
15 January 24th of '99 and apparently written by Inmate Clark  
16 concerning his various complaints about his housing  
17 situation and so on.

18 And so I find that those items should be and are  
19 ordered to be provided to the defense.

20 Now, as to the whole -- because this is the original  
21 file apparently and record of the Department of Corrections,  
22 as to the whole file itself and -- and getting those --  
23 copies of those documents from that file, how do you want to  
24 handle the mechanics of that?

25 MR. FALLMAN: Your Honor, I -- I don't want to really  
26 get into that part of it but other than to say somebody in  
27 my office, I think Rick Barton, got a call from Jim Rogers  
28 saying that he needs his entire original file back

1 eventually and so however the Court and Mr. Kersh would  
2 handle that.

3 THE COURT: Well, I assume so. I guess -- I guess  
4 the simplest thing to do is just take photocopies of those  
5 documents I have mentioned, give them to Mr. Clanton and --  
6 and that's it.

7 Is that -- will that be sufficient or do you want  
8 more of a record made?

9 MR. CLANTON: Well, yes, your Honor, I would ask that  
10 the entire file that the Court has before it be sealed for  
11 possible appellate review. We certainly --

12 THE COURT: All right. Well, maybe that's the best  
13 way to handle it then. So if you want to preserve the issue  
14 of what might not have been ordered discovered out of the  
15 file, probably the thing to do then is to -- is to make a  
16 full copy of the entire -- of everything in the entire file,  
17 it's not too voluminous anyway, and then make copies of  
18 those things that I have mentioned just now on the record,  
19 provide those to Mr. Clanton, place everything else under  
20 seal to be -- to be opened on order -- only on order of this  
21 court or a higher court for examination if there's a later  
22 review as to the propriety of this order that I'm making  
23 right now.

24 So who should accomplish that?

25 LIEUTENANT KERSH: Our office can handle that, your  
26 Honor.

27 THE COURT: You can handle that?

28 LIEUTENANT KERSH: (Nodding.)

1 THE COURT: All right, so would you like me to turn  
2 this -- turn this file over to you then for the purpose of  
3 making those copies and providing -- providing the ones to  
4 Mr. Clanton that he is to receive? Do it that way?

5 LIEUTENANT KERSH: (Nodding.) Yes, sir.

6 THE COURT: Okay, so what I'll do then is I'll order  
7 that the one -- one set consisting of the whole file,  
8 everything to be discovered and everything not to be  
9 discovered will be provided to the clerk of the Court to be  
10 held under seal, and those four documents that I mentioned  
11 will also be copied and copies of those provided to the  
12 attorneys.

13 So I'll turn this over to you then, Lieutenant Kersh.

14 MR. CLANTON: If I -- I'm sorry, your Honor.

15 THE COURT: Yes.

16 MR. CLANTON: I apologize for interrupting the Court.  
17 I'm just troubled somewhat by the returning of the file for  
18 copying and return to court. I think if it's filed it  
19 should stay with the Court for the purpose of making the  
20 copies. I think once the Court's made its ruling I don't  
21 think it's appropriate to hand the file back to C.D.C.

22 THE COURT: Well, apparently this is an original  
23 working file that I assume will have more documents -- this  
24 is somebody's work that he's doing; he needs his records.

25 MR. CLANTON: Well -- and I think that's fine and I  
26 have no problem with getting it returned to him, but I think  
27 this court should have an entire copy of what -- of those  
28 documents prior to returning them to C.D.C.

1 THE COURT: Yeah.

2 MR. CLANTON: After this Court's ruling it sealed.

3 THE COURT: Well, if you would prefer I guess we  
4 could have the clerk make the copies.

5 MR. CLANTON: I think -- I think just for the record  
6 and for -- for abundance of caution I think that's  
7 appropriate, your Honor.

8 THE COURT: All right, I'll --

9 MR. CLANTON: Because --

10 THE COURT: I'll order then that the clerk will make  
11 the copies and then -- so who do you want her to return the  
12 original file then to or -- Mr. -- Mr. Fallman, were you  
13 instrumental in getting that?

14 MR. FALLMAN: No, that was brought here -- I think  
15 Mr. Rogers personally brought that last week.

16 THE COURT: Yeah.

17 MR. FALLMAN: For possible in camera. That probably  
18 should go back to the Internal Affairs Department in  
19 Sacramento and I don't have their exact address but it's  
20 James Rogers, Special Investigator.

21 THE COURT: All right. Well, let's --

22 LIEUTENANT KERSH: Yeah, it's in the file.

23 THE COURT: Yeah, we'll give that to the clerk then  
24 and she can make the copies and distribute them as I've  
25 indicated and seal them as needed.

26 Okay, we've got that accomplished now. What next?

27 MR. CLANTON: Well, your Honor, I do have some  
28 copies -- I would like to be heard in regards to the Court's



1 ruling.

2 THE COURT: Yes.

3 MR. CLANTON: And regards to some questions. Part of  
4 this record with regard to the Clark matter I want to make  
5 sure includes my letter and fax to the Court making clear  
6 what I was trying to receive in terms of discovery. From  
7 what I understand the Court is going to grant me, there are  
8 significant portions what I consider relevant discovery that  
9 are not going to be coming to the defense as a result of the  
10 Court's ruling. I want to make sure that the record shows  
11 that I have listed a number of items there that I think  
12 are -- absolutely essential so that I have a clear  
13 understanding of the nature of Mr. Clark's contact with  
14 Internal Affairs, his reversal from earlier testimony and  
15 any and all inducements, incentives or benefits he's  
16 received as a result of that. I don't --

17 THE COURT: Well, you need to be aware that the file  
18 I was given for in camera review doesn't include a lot of  
19 that stuff you're talking about in any way, shape or form  
20 so --

21 MR. CLANTON: That would be fine. I just want to  
22 make the record that the people who are present at this  
23 proceeding also have a copy of this very list that I faxed  
24 to the Court. If that file does not contain any of that,  
25 my -- my requests are directed directly at the District  
26 Attorney and C.D.C. whose representatives are present today  
27 to whom my requests are -- are well known and have been  
28 memorialized.

1 THE COURT: Well, so that we're breaking down this --  
2 this down into pieces so that we can deal with, with respect  
3 to this file, this file of I guess Special Agent Rogers.

4 MR. FALLMAN: (Nodding.)

5 THE COURT: Let's take care of that first and then if  
6 you have other requests we'll talk about other things, but I  
7 will -- so that it's clear I will make note that there was a  
8 memorandum on the letterhead of Russell Clanton dated  
9 January 29th of '99 that was receive stamped into the Court  
10 on -- the Court's file on January 29th which has a total of  
11 thirteen items that Mr. Clanton feels should be provided by  
12 way of discovery in this case. And I have considered this  
13 file in connection with Mr. Clanton's memorandum in  
14 determining what items should be discovered from that file  
15 of Mr. Rogers.

16 Now, once -- once we leave the file aside of Mr.  
17 Rogers then we can get onto other issues.

18 MR. CLANTON: That's fine, your Honor.

19 THE COURT: But is there anything else with respect  
20 to this file that you want to address on the record?

21 MR. CLANTON: No, I believe the fact that the Court  
22 has -- has agreed with the defense that should be sealed for  
23 possible appellate review ends the matter.

24 THE COURT: Okay. So what else then on the issue of  
25 discovery, and are these matters that you have been unable  
26 to resolve informally since you're required to do that  
27 first?

28 MR. CLANTON: Well, I would -- compartmentalize my

1 request, your Honor. Specifically I'm speaking now as to  
2 the Clark matter. The People received likewise on January  
3 29th and -- a copy of my letter to the Court that the Court  
4 has read into the record with regards to the number of  
5 requests. The People have that. I know that C.D.C. has  
6 been made aware of the contents of that letter. I think all  
7 of those items that I've listed there are available to  
8 C.D.C. or the People and that they are in fact fundamental  
9 to my understanding of Mr. Clark's relationship to the  
10 People, any of the inducements, any of the benefits, any of  
11 the incentives that he has received in any way, shape or  
12 form, whether they be reductions in sentence, intervention  
13 by the District Attorney or C.D.C.'s review of any employee  
14 misconduct issues that Mr. Clark has raised in the past.

15 And I say that only because the memo that I received  
16 that was authored by Mr. Rogers specifically targeted the  
17 employee misconduct issues that Mr. Clark had apparently  
18 with C.D.C. and I think that the mere fact that those are in  
19 the report are red flags for me. I'm not certain what that  
20 means. Have they looked into these employee misconduct  
21 issues, are they -- are those going to be resolved, is Mr.  
22 Clark going to pull in his horns in regards to any issues or  
23 litigation that he has in those areas in exchange for this  
24 testimony, all of those I think are very relevant when it  
25 comes to determining the nature of the relationship with the  
26 District Attorney and the measurement of credibility for a  
27 witness that the People might call at this late date.

28 THE COURT: So which of these things do you claim

1 exist but you have not been given?

2 MR. CLANTON: All of them.

3 THE COURT: All right. Well, what makes you think  
4 that they do exist and that they are being withheld from  
5 you?

6 MR. CLANTON: Well, number one, I made the request  
7 and they haven't come to me.

8 THE COURT: All right. Well, that doesn't mean they  
9 exist.

10 MR. CLANTON: Right. That's true, your Honor. I  
11 would just say -- I don't think that there's any argument  
12 that Mr. Fallman has had some conversation with Mr. Clark or  
13 that C.D.C. has had some conversation with Mr. Clark and  
14 there's been some discussion of what Mr. Clark's going to  
15 get out of this testimony.

16 Now, I think that --

17 MR. FALLMAN: Your Honor, maybe I could shorten this  
18 up a little bit. I have received a one-page letter from Mr.  
19 Jim Rogers in Sacramento which led me to know that perhaps  
20 Mr. Frederick Clark might have information valuable to the  
21 People in this case. I discovered that one page -- I think  
22 the bottom of it was the part that was most relevant to me,  
23 and the rest of it may be talking about things that counsel  
24 is talking about here. Based on that letter, I went out to  
25 Pelican Bay State Prison after having Mr. Daniel L. Smith,  
26 Special Agent from the Special Service Unit of the  
27 Department of Corrections, come up from Sacramento and in  
28 the room was Officer Willis and we did a video of a

1 statement of Mr. Clark.

2 The things that he was offered were immunity; that he  
3 would not be charged -- that he would not be charged for  
4 that he said was perjuring himself when he testified in the  
5 People versus Littrell. He was not offered immunity for --  
6 for any later perjury. He was made aware that there -- I  
7 believe by Officer Willis, that there may be one or more  
8 D.A. referrals pending but unfiled in my office. No deals  
9 were made or offered to him that we would dismiss those or  
10 do anything with those if those exist, and I haven't seen  
11 them; they're not part of any deal.

12 He -- the other thing that he wanted, that he most  
13 wanted and that I have encouraged C.D.C. to cooperate on is  
14 he wants safe housing. Because of the fact that he says  
15 that he's willing to come forward and testify now, he wants  
16 safe housing. And I'm -- I want him to get that and I'm  
17 encouraging C.D.C. --

18 THE COURT: Well, aside from the representations  
19 you're making now about what's been offered him or whatever,  
20 and hasn't, has this ever been reduced to writing or is  
21 there any memorandum or anything that would be discoverable  
22 about this?

23 MR. FALLMAN: It -- I don't think so other than if  
24 it's on the tape, we've given a copy of that videotape to --  
25 to counsel.

26 MR. CLANTON: (Nodding.)

27 MR. FALLMAN: And if it's on there it's on there. If  
28 it was said before that was turned on I don't know. Because

1 I haven't looked at the tape since we went out there but --  
2 at any rate, that's --

3 THE COURT: Well, are you revealing all this to him  
4 for the first time or has this already been done?

5 MR. FALLMAN: No, I've told counsel what I'm saying  
6 to you right now before. The -- he has brought up something  
7 that I -- that I should make clear, though. Because in  
8 cases of witnesses who have testified before, inmate  
9 witnesses, it is my routine and practice to send a letter to  
10 the Board of Prison Terms which I've later learned may not  
11 be the right place, but I would send such a letter normally  
12 to -- to whatever the right place is in C.D.C. under Title  
13 15 asking that the correct tribunal consider taking up to  
14 one year off of a -- any inmate sentence who confers a  
15 benefit on society. I write those kind of letters. I  
16 intend to write those kind of letters for inmate witnesses  
17 in this case but not for Mr. Clark.

18 THE COURT: Well, to solve our immediate problem  
19 which is whether there's -- there's discovery out there to  
20 be turned over, how can we quickly get to the bottom of  
21 this? As to what is and what isn't in existence and should  
22 be discovered?

23 MR. CLANTON: It -- I'm in a -- in a very big  
24 disadvantage, your Honor. I've communicated my request  
25 immediately --

26 THE COURT: Right.

27 MR. CLANTON: -- the day after I became aware of  
28 this.

1 THE COURT: So what do you want to do about it?

2 MR. CLANTON: Well, to date I haven't received  
3 anything but neither have I been told it doesn't exist. We  
4 have a situation if in fact he is getting a housing  
5 change -- people who are in the SHU are in some conditions,  
6 desire housing change. That in many instances can be an  
7 incentive, an inducement to say anything here. And I think  
8 if in fact that housing change has been -- has been  
9 undertaken, that's memorialized somewhere in a memo and I'd  
10 like that memo and --

11 MR. FALLMAN: Your Honor?

12 MR. CLANTON: I -- excuse me. I must say that  
13 Officer Willis has been very accommodating on most issues  
14 and I think that if that were available she would make that  
15 available to me. I don't have any problems --

16 THE COURT: Well, procedurally, what do you want done  
17 right now this afternoon?

18 MR. CLANTON: Well, what I would like is I'd like a  
19 statement from counsel or C.D.C. that they have a list of my  
20 requests to tell me what does not exist. I don't have that  
21 to date. After all of the things on this list I don't have  
22 a list of those things which exist or do not exist. I've  
23 already made the request. The request is a week old at this  
24 date.

25 THE COURT: You do that.

26 MR. FALLMAN: Your Honor, what I would have him do on  
27 the face of the trial is have him read item by item so we  
28 have them right now.

1 THE COURT: Well, I have a whole slew of people  
2 waiting this afternoon that were supposed to start two hours  
3 ago at 2:00 o'clock and I've got to get through that work.  
4 If you -- if you folks would like to hold a meeting  
5 perhaps --

6 MR. FALLMAN: (Nodding.)

7 THE COURT: -- and go over this informally which is  
8 what -- how you're supposed to do it anyhow, maybe we can --  
9 maybe we could get these needs met this afternoon.

10 MR. FALLMAN: Fine.

11 THE COURT: Would that -- would that work?

12 MR. CLANTON: I'm open to that, your Honor. I just  
13 make one comment on the record that I would like a copy of a  
14 transcript of this proceeding with regards to all the  
15 issues.

16 THE COURT: Well, you can see the court reporter and  
17 I'm sure you can get a transcript from her.

18 MR. CLANTON: I would just ask that one be --

19 THE COURT: How soon you can get it I don't know.  
20 They're very busy but --

21 MR. CLANTON: I understand, and actually --

22 THE COURT: Talk to her about that.

23 MR. CLANTON: I will.

24 THE COURT: All right, you want to just recess this  
25 matter while I take up my 2:00 o'clock calendar that's been  
26 waiting?

27 MR. FALLMAN: (Nodding.)

28 THE COURT: And then we'll get back to you before



1 we -- wrap up today?

2 MR. FALLMAN: Yes. (Nodding.)

3 MR. CLANTON: That's fine, your Honor. I'll meet --

4 THE COURT: All right, we'll do that.

5 (The proceedings then  
6 recessed till 5:05 p.m.  
7 while unrelated cases were  
8 handled.)

8 THE COURT: All right, People versus Elliott Grizzle.  
9 We are again in session with Mr. Grizzle with Mr. Clanton  
10 and the District Attorney.

11 And I hope you've had a productive session with -- on  
12 discovery issues? Have we got it all resolved, hopefully?

13 MR. CLANTON: Well, it's resolved I believe from  
14 C.D.C. and People's point of view, not to my satisfaction,  
15 but they've basically told me what they're not going to give  
16 me and that's that. So in that sense it's resolved; it's  
17 just simply not to my satisfaction.

18 THE COURT: So then are we -- is there any kind of a  
19 record we need to make or are we ready to go to trial then  
20 on Monday?

21 MR. CLANTON: Well, I think we need to make a record  
22 so if I need to seek further review of my denial I can do  
23 so.

24 THE COURT: All right, who would like to state the  
25 issue then for the record?

26 MR. CLANTON: Well, I think we need to -- well,  
27 I'll -- I'll try, your Honor. Is -- if Officer Willis was  
28 here it might be more --

1 TRANSPORTING OFFICER: She's in the restroom.

2 MR. CLANTON: I think we ought to wait for her  
3 because some of these issues are directly relating to her  
4 denials.

5 THE COURT: All right.

6 (A brief pause in the proceedings.)

7 THE COURT: Okay, Officer Willis, the court liaison  
8 officer, is also present.

9 Okay, go ahead and state for the record what the --  
10 what the unresolved issues are pertaining to discovery.

11 MR. CLANTON: Well, I would start, your Honor, with  
12 my request with regards to Mr. Clark, and it's important  
13 that I make a record of these things so I'll try and be  
14 brief but I want to get to the point.

15 Specifically with the letter that is part of the  
16 record in the Court's file, the July -- the January 29th  
17 letter to the Court where I make my request, we specifically  
18 addressed those in a session with Miss Willis -- excuse me,  
19 Officer Willis and Mr. Fallman. Number one on that list was  
20 I had requested any and all benefits or promises to Mr.  
21 Clark from any agency or individual given in exchange for  
22 his testimony. I was given a letter and -- which indicates  
23 that Mr. Clark was in fact offered to parole in another  
24 state rather than in -- particular county. And I am  
25 informed by counsel and by C.D.C. that other than immunity  
26 and some other -- potentially housing changes of which were  
27 nonspecific, that is the sum total of the discovery. So  
28 I'm -- I take counsel and C.D.C. at their word in that sense

1 and I do -- I am in receipt of the letter and I guess if I  
2 develop any other issues I'll certainly make those known and  
3 I have the opportunity to cross-examine Mr. Clark so to that  
4 degree I'm satisfied.

5 Number two, the date and report therein that Mr.  
6 Clark was first contacted by C.D.C. or other agency wherein  
7 he offered to testify to the People. I am told that from --  
8 from Officer Willis and from Mr. Fallman that what I have  
9 here with what this court has provided me to date is the  
10 entire record to indicate the first time Mr. Clark may have  
11 contacted C.D.C. or any agency with regards to his desire to  
12 testify.

13 MR. FALLMAN: Well, may I -- may I add something to  
14 that?

15 MR. CLANTON: Sure.

16 MR. FALLMAN: Your Honor, what I've said is based on  
17 the one-page letter which I received from Jim Rogers. I  
18 subpoenaed Mr. Rogers here last week with his entire file  
19 on -- relating to Clark. Now, I can't say whether  
20 everything in the world that they have on Clark is -- is in  
21 that file or not, but -- but my intent in the subpoena  
22 was -- the subpoena duces tecum was to bring everything that  
23 they had relating to Frederick Clark, whatever it was that  
24 caused them to fax me the one page that I had which I gave  
25 to counsel so -- the Court has seen apparently what they  
26 have. And if there's something in that that the Court has  
27 held back for whatever reasons then so be it, but I'm not  
28 saying that's everything. I'm saying that -- I believe that

1 the file that you saw was everything. And counsel now has  
2 what you're -- you've allowed him to have out of it plus the  
3 one page that I gave him. Plus the videotape that I gave  
4 him.

5 MR. CLANTON: Well, obviously what I'm concerned  
6 about is the timing of Mr. Clark's contact with C.D.C. and  
7 his desire to -- to change his testimony a hundred and  
8 eighty degrees. It's counsel's representation that  
9 everything he has seen with regards to that is -- is, to his  
10 knowledge, what I have here although there may be other  
11 items in that file that the Court has viewed and that I  
12 requested sealed for appellate review. So it's not  
13 necessarily to my total satisfaction but I -- I will take  
14 Mr. Fallman at his word that he can't provide any other  
15 additional -- additional information. If it is in fact in  
16 that file then it is in fact available for appellate review.

17 THE COURT: All right, continue.

18 MR. CLANTON: The nature of all employee misconduct  
19 issues Mr. Clark had or has with C.D.C. and how it -- or  
20 they have been affected by Mr. Clark's decision to testify  
21 for the People.

22 You want to address that the way that -- you approach  
23 that? (Mr. Clanton speaking to Ms. Willis.)

24 That the -- your Honor, they're basically saying I'm  
25 not going to get any information with regard to that bottom  
26 line and that's not to my satisfaction.

27 MR. FALLMAN: Well, I would address that, number one,  
28 Jim Rogers works for the Internal Affairs Division in

1 Sacramento. My understanding of the way that the Department  
2 of Corrections -- after the Jose Garcia trial, they moved  
3 their serious internal affairs matters to a separate  
4 department in Sacramento and northern region and another one  
5 in the southern region and I would assume that whatever  
6 internal affairs things that they had that related to Clark,  
7 any complaints he may have made would have gone to Mr.  
8 Rogers. Since I subpoenaed Mr. Rogers' entire file duces  
9 tecum, again I would have to refer to whatever the Court  
10 read. If there's -- I suspect and can only suspect that --  
11 that counsel has already gotten whatever he's going to get  
12 because you've already done the in camera review from the --  
13 from the Internal Affairs officer whom I subpoenaed the  
14 entire file to bring to you from.

15 MR. CLANTON: Well, I'm -- I've raised that point  
16 several times to the Court. I think I don't need to go on  
17 and on about that. Since -- one week ago when I was first  
18 made aware of Mr. Clark's sudden change of heart in these  
19 matters I immediately contacted the Court and counsel and  
20 gave them the list of discovery issues I thought were  
21 relevant with regards to that. The employee misconduct  
22 issues that Mr. Clark had I've several times indicated to  
23 the Court are a problem for me. I want to know what those  
24 are about. I've made my request. It's been denied by  
25 counsel. He -- basically says whatever he has may be in his  
26 file and so it's up to the Court's decision.

27 THE COURT: Okay, continue.

28 MR. CLANTON: Any and all notes or reports by James

1 Rogers of C.D.C. Internal Affairs during his investigation  
2 of Mr. Clark and his purported desire to testify for the  
3 People. I'm told by counsel and Officer Willis that to  
4 their knowledge this is all they have that -- with regards  
5 to -- that it is all they know about is what I have and that  
6 there may be other things in the file. The Court has that  
7 so therefore the ball's in the Court's court. I obviously  
8 would like any additional reports by Mr. Rogers if they  
9 exist.

10 THE COURT: All right. Well, we -- I've gone through  
11 that and picked out anything that might be relevant so I  
12 think that's been accomplished.

13 MR. CLANTON: Okay.

14 THE COURT: All right.

15 MR. CLANTON: And again I would just note that  
16 that's -- if there are additional reports from Mr. Rogers  
17 and we're not getting those, that would be an objection we  
18 would raise but the file's sealed.

19 Any and all reports involving Mr. Clark at Pelican  
20 Bay State Prison since July 25th involving, but not limited  
21 to, reports of threats, actual assaults, 115's, assess to  
22 other inmates involving Mr. Clark, 114's, or other official  
23 notes involving Mr. Clark since July 1997. In speaking with  
24 Officer Willis she indicated to me that she is going to  
25 review files to determine if there is any relevant  
26 information with regards to that and that she will do that  
27 as soon as possible and hopefully by tomorrow.

28 MR. FALLMAN: But counsel has also agreed that to

1 limit the time period down that she has to look at that it  
2 will only be after the date of the Gary Littrell trial  
3 because counsel has stated that he wants this because he  
4 wants to see if anybody intimidated Clark because he  
5 testified in the Gary Littrell trial. Therefore any date  
6 prior to that would be irrelevant.

7 MR. CLANTON: That's -- that's accurate, your Honor.  
8 I think that's the operative time frame.

9 THE COURT: All right, go ahead.

10 MR. CLANTON: Any tape-recorded or video statements  
11 by Mr. Clark since July 25th, 1997, and any and all audio or  
12 video statements by any other inmate concerning Mr. Clark  
13 since July 25th, '97. I'm informed by counsel and Officer  
14 Willis that my tape of Mr. Clark to their knowledge is the  
15 sum total of any electronic statements. I'm not certain  
16 whether the file the Court has alludes to the existence of  
17 any other audiotapes or videotapes. Certainly if they do,  
18 again we would make the request of the Court that those be  
19 provided to us. If the Court decides not to I would just --  
20 indicate we object to that and communicate to the appellate  
21 courts through the sealed file.

22 Number eight, all reports relating to the  
23 investigation of Mr. Clark's sister as it relates to the  
24 report filed by James Rogers. I am told absolutely by Mr.  
25 Fallman and Officer Willis that there are no attempts at  
26 investigation in that particular area and I'm going to take  
27 them on their word at that. I think they can be trusted.

28 MR. FALLMAN: Well, what -- what's been said is we've

1 asked Clark to see if the person will be willing to come  
2 forwards and cooperate, but there's so little time left  
3 before trial that we don't have the wherewithal to send  
4 people where this person may be and invest in that in case  
5 that ends up being a wild goose chase. So we're not  
6 affirmatively doing that, but if he comes back and says that  
7 his sister will testify, we would accept that if it happens  
8 and that's what we've told him.

9 MR. CLANTON: And I would only ask if that is done  
10 that I be communicated to directly and immediately.

11 Number nine, all logs showing housing of Mr. Clark,  
12 Mr. Grizzle, since July 25th, 1997. Officer Willis has  
13 indicated to me that she's going to do her best to try and  
14 provide that to me. So we're agreed on that one.

15 All statements of Brian Healy as they relate to  
16 Frederick Clark since July 25th of '97. I am told by  
17 counsel and Officer Willis that there are none and that if  
18 they were to exist they would have them. Again, I would --  
19 I'm in a position of taking them at their word on that. So  
20 if anything were to surface, we'll deal with it at that  
21 point.

22 Eleven, the current housing location of Brian Healy  
23 within C.D.C. I'm told that that's not going to be given to  
24 me.

25 The current housing of Frederick Clark in C.D.C. I'm  
26 told that that's not going to be given to me.

27 And any additional statements or reports concerning  
28 Frederick Clark since January 13th, 1999. I'm told by



1 THE DEFENDANT: Not acceptable.

2 THE COURT: Not acceptable. Well, then.

3 Procedurally what do you want to do?

4 MR. FALLMAN: Well, I'm -- I'm not sure -- I mean  
5 you -- you've heard the evidence of the last trial. I'm not  
6 sure that these people would come up with anything other  
7 than just a discovery fishing expedition. I would just as  
8 soon go forward with the trial.

9 THE COURT: Well, the different -- part of -- part of  
10 the reason we have a different ball game here than we did  
11 with Ridinger is that the Ridinger case was not a  
12 who-done-it case. I mean, everybody knew --

13 MR. CLANTON: I'm sorry, your Honor?

14 THE COURT: -- who Ridinger --

15 MR. CLANTON: I apologize for interrupting but the  
16 Court's indicating Ridinger.

17 MR. FALLMAN: Littrell.

18 THE COURT: Littrell. Everybody knew who Littrell  
19 killed. I mean, he didn't even deny it. So to a large  
20 extent, what went down between he and Marsh in that cell  
21 really was -- you know, the issue, was it self-defense or  
22 not. But in this case where you're -- and although  
23 admittedly there was a conspiracy count and so on, but --  
24 but in this case you -- you essentially are hanging your hat  
25 entirely really on the conspiracy.

26 I mean, everybody knows this defendant did not kill  
27 Marsh. He couldn't have. He was in another cell.

28 MR. FALLMAN: (Nodding.)

1 THE COURT: His liability is -- if any, is  
2 derivative. And so -- and because essentially your -- your  
3 motive and really the only motive I'm aware of that you have  
4 to show why he would have helped Littrell to do this is this  
5 gang thing.

6 MR. FALLMAN: (Nodding.)

7 THE COURT: So whatever comes of this, this defendant  
8 has a stronger argument than Littrell had.

9 MR. FALLMAN: (Nodding.)

10 THE COURT: To get -- to delve into this stuff.

11 Well, I guess what I'm -- what I am considering  
12 doing, and the hour is quite late. I've been in session  
13 here with a couple of very short breaks ever since 1:00  
14 o'clock. Not to mention working this morning as well. I'm  
15 exhausted, frankly. And I think everybody else is --  
16 probably is, too. We have one more business day left before  
17 our trial commences on Monday. And I would propose that we  
18 might consider sleeping on this and coming back sometime  
19 tomorrow maybe about 3:00 o'clock. With a view to resolving  
20 this rather than -- rather than to try to thrash this out at  
21 some late hour of the night tonight. And you might consider  
22 how this case might be -- both sides might -- might consider  
23 how this case might be resolved. I mean, if not, how we're  
24 gonna -- how we're gonna handle this discovery issue.

25 Is that -- is 3:00 o'clock tomorrow beyond the means  
26 of the transportation team? Is that -- does that put you  
27 guys in an impossible box?

28 Sergeant, how are you with your schedule?